[3.]

SOME

# REASONS

Humbly Offered to the

Conſideration of the

# PARLIAMENT,

FOR THE

Continuance of the Writs of *Capias*, and *Proceſs of Arreſt*, in Actions of Debt, *&c.*

And againſt the

Courſe or Way propoſed of a Summons peremptory, to be given unto Debtors, or affixt upon the fore-doors of their dwelling Houſes, and a Judgement to be entred by default, if within a few dayes after the Return of the Summons, Pleas or ſatisfaction be not given or made to hinder the ſame.

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*Some Reaſons humbly offered to the Conſideration of the Parliament, for the continuance of the Writs of* Capias, *and* Proceſs of Arreſt, *in Actions of Debt*, &c. *And againſt the way or courſe propoſed of peremptory* Summons.

THe Arreſt of the body of a Defendant in Actions of Debt, and other perſonal Actions, to appear or give Bail to the Action, hath been as ancient as the Common Law in *England*, or the early proceedings thereof, and was before the Statute of 25 *E.* 3. *cap.* 17. for proceedings to Utlary thereupon, and is the ſame in effect with a *Pone*, to cauſe him to give pledges or ſureties to anſwer to the Action, for an Attachment and an Arreſt do in many of the Records and Books of the Law ſignifie one and the ſame thing, and are very often *Synonimouſly* uſed the one for the other. The principal difference betwixt a *Pone* and a *Capias ad reſpondendum*, being that no Bail could be taken by the Sheriff, upon a *Capias ad reſpondendum*, untill the Statutes of the third year of the Raign of King *Edward* the Firſt, *cap.* 15. and the

twenty third year of the Raign of King *Henry* the Sixth, allowing Bail or Bonds for appearance, the *Capias* being made by a neceſſity of Law, and for the expedition of Juſtice, where the Defendant hath no viſible Eſtate, as more than three parts of all the people of the Nation have not.

2 Reg. 4. 1, 7. Prov. 6. 1. And ſuch a kind of proceeding by Arreſt may not ſeem at all cruell or unjuſt, when we find both preſidents and approbation of the like and greater ſeverity

Mat 18. 25, 26, 27 28, 29. 30. Lev. 25. 39. in holy Writ, and the Old and New Teſtament, as *ſelling the debtor, and making his children to be bond-men*, and *of taking and caſting into priſon for debt, untill the utmoſt farthing were paid*, and was long before the Incarnation of our bleſſed Saviour in uſe among the *Greeks* and *Romans*, thoſe great Maſters of liberty, and lovers of juſtice, nor by *Chriſt* himſelf condemned, who adviſed

Mat 5 25. Defendants to *agree with their adverſaries, before they were by them delivered to the Judge, and the Judge deliver them to the Officer, and they be caſt into priſon.*

Our Arreſts *ad reſpondendum* being but to enforce a gage, or pledge, or to detain or put a Debtor or Defendant into the cuſtody of the Law, to the end he do not abſent himſelf, or run away, untill he ſhall have given bail, or if none required appear to the Action, which may not ſeem to be unneceſſary.

When if all the people of the Nation were numbred, or put into ranks, there would be,

1. Free-holders.

2. Copy-holders, Leaſe-holders, and ſuch as have an Eſtate only in Tythes, Annuities, or Rent-Charges.

3. Men of Eſtate only in Goods.

4. Men of Trade and Credit only.

5. Men whoſe Eſtates are only in money at uſe, or abroad in other mens hands.

6. Men

6. Men of no Eſtate but what they carry about with them, or hope for by their Friends, or their induſtry, or ſome future preferment.

7. Such whoſe Eſtates depend upon their daily labours or profits ariſing thereby, as Miniſters, Lawyers, Labourers, and the like.

8. Mariners, and a ſort of adventitious people, who have little or no abode, going or coming to or from beyond the Seas, Merchants, Strangers, and the like.

Of all which ſeveral ſorts of people, the Free-holders and firſt Claſſis are the only men which are properly to be ſummoned, or to be within this new propoſed Law, becauſe they have Land and Eſtates to be known, and thereby Summoned, and are to be found with ſome certainty, but are not the fortieth part of thoſe which have not.

Of the ſecond ſort, the Copy-hold Eſtates, which being very near a fifth part of the Nation, are not extendable or liable to Debts, nor can without manifeſt prejudice to the Lords of the Mannors, whoſe Predeceſſors or Anceſtors did under certain limitations permit them to enjoy them, be made to be ſo. Tythes are not diſtrainable for the moſt part, and may be ſold or compounded for before they be due: Leaſes may be ſurrendred or aſſigned, ſo as none ſhall eaſily find the true Proprietor, Annuities or Rent-Charges are not extendable.

The third and fourth ſort may either convey away their Goods, or have very little of them.

The Eſtate of the fifth either not to be found out, or hardly to be come at.

The Eſtates of the ſixth, ſeventh, and eighth ſort, being the one half of the people, are either not at all to be found, or inſufficient, or hardly to be ſummoned or com-

compelled without Arreſt to ſatisfie their Debts.

And if ſuch Defendants do not appear, (thoſe of the firſt ſort only excepted) the Plaintiffs will get no more by the way propoſed of entring up a Judgement by default, but a Judgement reverſible upon ſmall or concealed Eſtates, or none at all, or againſt ſuch as can remove themſelves to as many places as they liſt up and down the Nation, and all that the Plaintiffs can do, will be but to ſpend more money, time, and charges, than ever they did, and to no other purpoſe but to violate that great Axiome of the Law, foſtred and nurſed up by the Laws of nature and reaſon, and practiſed amongſt moſt of the Nations of the Earth, not to condemn thoſe that are not heard, or believe one party without the other.

And where the three parts of four of the Nation are in Actions of Debt, Accompt, Covenant, and Detinue, without any real or viſible Eſtate, whereupon Judgements by default or Executions thereupon may operate with us, the Proceſs of *Summons*, *Pone*, and *Diſtringas*, being for ſome ages more in uſe with us in *England*. But as to the recovery of Debts, happening to be many times fruitleſs, to the great hindrance of the merchandize, and commerce of this Nation, former Parliaments did allow (as appears by divers Statutes) the Writ of *Capias* to arreſt, as a full remedy and moſt neceſſary for this Kingdom, where the Creditor by arreſting the perſon of his Debtor, might in an hour and a day or ſome ſhort time recover his Debt, and appeared to be a more ſpeedy and better way to bring men to juſtice, than to ſeek for what would be incertain enough, where the Debtor had any Lands or Goods, but almoſt impoſſible or very tedious where the Debtors were ſuch as had none at all.

3 *Rep.* Sir *Will. Herberts* Caſe.
52 *H.* 3. *Anno* 1267.
25 *E.* 3. *cap.* 17. *Anno Dom.* 1350.

For

For an Attachment of the perſon doth ſecure the Plaintiffs Debt, either by preſent payment, or cauſing other ſatisfaction, which the proceedings by Summons doth not, and as a man will give all for his life, ſo he will do much for his liberty.

When men are detained upon an Arreſt, which is but ſeldom, (for few of many threatned or intended to be arreſted,) are arreſted, and then it is ordinarily but for a ſhort time, untill they have given Security to anſwer the Action, or a Warrant unto an Attorney to appear.

If men may not proceed by Arreſt, it will much hinder Trade and other dealings, for they will not adventure to truſt where there is much liberty for the Debtor to ſtand out, and Merchants and Tradeſmen do many times look upon the perſon as the beſt Security, and the remedy by Arreſt the ſpeedieſt means to gain their Debts, without which Trade will neceſſarily decay.

The Proceſs to arreſt doth end moſt Suits before the perſon be attached, and before appearance, as experience doth ſhew, for when men will not regard a Summons, they will take courſe to pay their Debts before they will ſuffer an Arreſt.

Many will take occaſion from the Summons as formerly they have done, to be gone from one Countrey to another, and to make away their Eſtates, and though the Plaintiff know it, yet he cannot help himſelf, which the Arreſt doth quickly and eaſily prevent, and the Law-makers of this Land have ever held it more reaſonable to provide for the ſatisfaction of the Creditors, than the liberty of the Debtors. 52 H. 3. cap. 23.

*England* is an Iſland compaſſed about with many Port-Towns, where there are many Merchants, and men that go abroad and trade by Sea, who buy wares upon credit, and have no fix'd Habitation to be ſummoned

moned at, or Eſtates to be diſtrained, and there will be continuall occaſion of Suits againſt divers perſons of this ſort, who will not much regard the Summons, but will betake themſelves and their Eſtates to Sea again, and the Creditors can have no remedy, whereas if the parties may be arreſted, they will make ſatisfaction.

Divers Tradeſmen do ſubſiſt upon their credits, and take up great ſummes of money, for which they can give no other Security than their perſons, and by advantage thereof do many times attain to great Eſtates by their induſtry, but if the Proceſs of Arreſt be taken away, they can hope no more to be entruſted, which apparently tends to their ruine.

Men ordinarily begin Suits upon neceſſity, and Debtors generally are ſeveral times or often called upon, before any Suit is commenced, which is in the nature of a Summons, but yet neither this nor the Writ of Summons doth drive men to any care of payment, untill the Proceſs of Arreſt do iſſue forth, being more compulſory, and a more ſpeedy remedy for the Creditors, than the milde and gentle Summons was found to be, as appears by ſundry Statutes, which are more proviſonal for the Creditors, who is alwayes out of his money, than for the Debtors, who ſometimes do not well ſpend it, nor have care to repay it.

By the way of ſuch a peremptory Summons, much buſineſs will reſt wholly upon the Affidavit of Sumners, or the like, which will be a means to multiply Suits, will be an unſure courſe, and induce more perjury into this Nation, than our Law would ever before this time give an inlet unto, and therefore former Parliaments providing againſt delayes by Summons, did not give Judgement upon default, but found out a

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ſpeedy and more legal and equitable remedy by Arreſt to bring the Defendant to anſwer.

By the Law a *Capias ad ſatisfaciend.* is conceived not to lye, but where there is a *Capias ad reſpondend.* firſt, and there is as great reaſon and equity for the Arreſt to anſwer before Judgement, as to ſatisfie after Judgement, becauſe the *Capias ad reſpondend.* doth compell the Defendant to take notice of the Action, to which he may plead if he will, and doth ſecure him that he ſhall not ſtart, ſo that when the *Capias ad ſatisfaciend.* doth iſſue forth, there is left no colour of juſt exception for the Defendant.

Experience doth ſhew, that the benefit of the Proceſs of Arreſt hath been very great to this Nation, and many Statutes and Acts of Parliament have from time to time given a larger extent unto it than before it had, and none hath abridged it in any thing which is now of great antiqnity, having been for many Ages the beſt remedy (for the people to recover their Debts, and to compoſe other differences) that our Anceſtors could deviſe.

The ſubtilty and ſubterfuges of Debtors having made the Proceſs of Arreſt now more neceſſary than formerly, there will be reaſon rather to adde to the remedies provided for the Creditors in former Parliaments, than to diminiſh them. And if any inconvenience by this ſo neceſſary a courſe happen to the Debtor, yet will the taking of it away prove more prejudicial to the Plaintiff, who is the party injured, and in reaſon is more to be preferred and favoured.

It will be a trouble more than needs put upon the people, to alter and over-turn our *fundamental* Laws, and the courſe and proceedings thereof, by way of *Capias* and Arreſt, which from the 25th year of the

Raign of King *Edward* the Third untill now, being 319 years, hath been more generally allowed by our Laws, and its right reaſon, putting Actions of the Caſe and Writs of Annuity into the like condition of Actions of Debt and Accompt, and have found it not to be ſo full of delayes, which the Statute of the 19th year of the Raign of King *Henry* the Seventh complained of, but to be more expedient and beneficial, for the people leſs circular and inconvenient, there being in the Court of Common Pleas a Writ of Summons in Actions of Debt, Accompt, Covenant, and Detinue, before a Defendant can be arreſted by a *Capias*, which is only where a *Nihil habet* was returned that he had nothing whereby he may be ſummoned, *nec eſt inventus*, formerly uſed by the Sheriffs in the return of a Writ of Summons, and as great a neceſſity in moſt Caſes to arreſt in Civil Actions, as it ever was in matters Criminal, all Arreſts being originally and naturally either *propter ſuſpicionem fugæ*, to prevent running away, or to puniſh Contempts of Juſtice, in not appearing to the Proceſs of the Courts of Juſtice.

19 H. 7. c. 10.

The neglect and corruption of Sheriffs and their Bailiffs, Catchpoles, *&c.* have been complained of when *Fleta* wrote his Book in the latter end of the Raign of King *Edward* the Second, and are now ſo heightened, as they are juſtly accompted to be one of the greateſt grievances of the Kingdom, and a great delay of Juſtice.

And therefore now to put more into their hands than is already, will be to tranſlate the Juſtice of the Nation out of a better into a worſe condition, and leave it or much of it to depend upon the ſwearing and forſwearing of Bailiffs and *Catchpoles*, and the Defendants careleſs and naughty Servants, now grown up to as great a grievance as the other.

Will

Will put the Nobility and Gentry whoſe loyalty and ſufferings have too much already waſted their former great Eſtates, into ſuch a miſtruſt, as their Bonds and Security will ſcarcely extend further than their own Servants, or more than ordinarily affected Tenants.

Will be againſt our *Magna Charta*, and the Statute of 42 *E.* 3. a branch and limb thereof, which ordaineth that *no man be brought to Judgement, but by matter of Record and Proceſs upon writ original*, which the Sheriffs ſummoning, or hanging it at the fore-door of the Defendants houſe, will not effect, for untill the Juſtices of the Court of Common Pleas have received the original Writ of Summons, and awarded Proceſs thereupon, it cannot be a matter of Record, nor can the Proceſs be made upon the Writ original untill the return thereof be expired.

The propoſed Act of Parliament will deſtroy the Kings Prerogative and Superintendency by his high Court of Chancery, over all the ſuperiour Courts of Juſtice, when as the Courts of Kings Bench and Exchequer ſhall be impowered to make the Writs of Summons, which his Court of Chancery, the *Officina Juſtitiæ*, ſtore-houſe and magazine of Juſtice, where he himſelf as the watchman of our *Iſrael* is by Law ſuppoſed to ſit, and take a more than ordinary care in the diſtribution thereof, hath ever ſince this Kingdom was a Monarchy now above 1000 years ago been authorized to do, and take away his juſt and legal prerogative and profit of his Utlaries, Fines upon original Writs, and his Seals of Writs in his Courts of Chancery, Kings Bench, and Common Pleas, which are aſſiſtant to the defraying of his charges of the Salaries, and ſupport of the Lord Keeper, Maſter of the Rolls and Judges in the adminiſtration of Juſtice, and give the Courts of Kings

Bench and Exchequer a cognizance which they had not before, which by Law is not due unto them, and take away from the Court of Common Pleas, a great part of that which *Magna Charta* gave it.

Raiſe ſuch a jealouſie and diſtruſt among the people, who are three to one in credit more than in ſubſtance and reality, as no man will be willing to lend any money, or help or relieve the afflicted.

Bankrupt and deſtroy moſt of the Tradeſmen, and be a means to help the over-haſty Creditors to a compoſition of four ſhillings *per* pound, or a great deal leſs, when as otherwiſe they might have had their whole Debts, and make the unbridled fury of one Creditor to be a cauſe of the never payment of many other Creditors Debts.

The cauſe or reaſon ſuggeſted of this over-longed after *Innovation*, is but a meer pretence to uſher in a change of our ancient and well approved courſes of Juſtice, for there is as may upon ſearch be demonſtrated, ſcarcely one Writ of *Exigent* for every ten Writs to arreſt, and where a Plaintiff cannot ſummon a Defendant at his houſe or lodging, or procure him to be arreſted in *Wales*, or ſome other County, where the potency and partiality of kindred, friends or allies, may prove to be as much as a *Sanctuary*, or City of *refuge* unto him, and may be the Caſe of many of the people of the Nation, nor be enabled to get Judgement by default, if he do not appear nor procure him to be arreſted, he ought not to be debarred his Proceſs of *alias Capias*, or *pluries Capias*, or an *Exigent* or Outlary thereupon, to find out or terrifie ſuch a lurking and inſolvent Defendant, the Outlary having a priviledge and latitude which other Proceſs have not, *viz.* by entring into any liberty where other of the Kings Writs out of his

great

great Courts at *Weſtminſter* do not run, as in the thirteen Counties or Shires of *Wales*, Cinque-Ports, County Palatines of *Cheſter*, *Lancaſter*, and *Durham*, and many other Liberties within this Kingdome, where the Kings Writs do not immediately run, forfeits to the King the Goods and Chattels and Profits of all the Defendants Lands during his life, which for the Creditors benefit may be granted by the King, towards the ſatisfaction of his Debt, and the Utlary pleaded in Bar to any Action which ſhall be brought by the Defendant againſt any other man, and could not anciently be reverſed, untill the Defendant had rendred himſelf for his contempt to the Kings Proceſs, to Priſon, purchaſed his Charter of pardon, and given ſpecial bail to anſwer the Action, the Law adjudging a Defendant to deſerve no better an uſage after eleven ſeveral contempts of the Kings Proceſs, many if not moſt of the *Exigents* having *Superſedeaſſes* put in unto them, which prevents the Outlary, and cauſing the Defendant if the demand in the Writ be 20 *l.* or above, to give ſpecial bail to the Action.

And if a Defendant happen to be outlawed, without notice given by the Kings Writ of Proclamation, which is very ſeldom, he may recover his damage by an Action upon the Caſe.

And therefore it may appear to be ſomething ſtrange that if there had been any inconveniencies in the Proceſs of Arreſt, or Utlary, that ſo many Acts of Parliament ſhould approve, and in ſeverai Caſes for more then 300 years ago allowed them, and that the rabble in *Wat. Tyler*, or *Jack Cades*, or *Kets*, rebellions or picking of quarrels againſt the Government, ſhould find nothing to Complain of them, And that the hindering

and

and delaying of men in the Purſuit, and recovery of their juſt debts, being in the Parliament of the ſecond year of the Reign of King *Richard* the ſecond, In the Caſe of *Robert* de *Hawley*, purſued upon an Arreſt in an Action of Debt, and ſlain at the high Alter in the Abby of *Weſtminſter*, with one of the Abbots ſervants, being then a Sanctuary into which he had fled, declared before the King in Parliament to be *a grievous ſin*, the Judges and Lawyers of the Land, and the Doctors of Divinity, Canon and Civil Law aſſenting thereunto, and the Doctors of Divinity, Canon and Civil Law, upon grave and udviſed deliberation, delivering their opinions upon Oath (which was never or not uſually before or ſince required in matters of Argument and Opinion) that in Caſe of Debt, Accompt or Treſpaſs, where life or member was not in queſtion, *no Sanctuary or Immunity of holy Church, ought to be allowed*, and in high expreſſions further ſaid, that *God, ſaving his perfection, nor the Pope, ſaving his holineſs, nor any King or Prince could grant ſuch a priviledge, and if any Prince ſhould grant any ſuch priviledge, the Church whoſe actions ſhould be according to vertue, was not to accept of any priviledge whereby ſuch a grievous ſin might ariſe to hinder any man voluntarily of his Juſt Debt*, and that in that great Conteſt wherein the then very powerful Biſhops and Clergy made all the oppoſition they could, there was nothing at all objected againſt the Proceſs or Courſe of Arreſt, although it was but within 28 years after the aforeſaid ſtatute of 25 E. 3. which gave proceſs of outlary upon Actions of Debt, and that in all our Parliaments before or ſince, where all the peoples grievances, and many of them in matters of no great conſequence have uſually been brought there ſhould not until *Oliver*'s Uſurpation, when this deſign was firſt hatched by a ſtrange kind of

Rot. Parl. 2 R. 2 part. 1.

*Syſteme*

*Syſteme* have been any complaint made againſt the Courſes of Arreſt, or Outlary, the former, being the only means which our Judges as well as thoſe of all other civilized Nations have *tuevi Furiſdictionem*, to make themſelves and their Orders, and the Kings Writs or Proceſs to be obeyed, and the latter being that of Utlary, the only means which the King hath without puniſhment, by loſs of life or member, in his Adminiſtration of Juſtice, to cauſe an obedience thereunto, and himſelf his Juſtices or Proceſs not to be contemned.

And if the long ago uſed and well approved Courſe of Utlaries, and Writs of Exigent ſhould be ſtopped, (which will as a Conſequent neceſſarily follow, if the Proceſs of Arreſt be taken away) it will not be juſt, or according to the reaſon and candor of our Laws of *England*; to award an Exigent, upon the firſt Summons, without as long a return and time prefixed as the returns of the *Capias*, *alias*, and *pluries*, which at the ſhorteſt do take up almoſt ſeven weeks, in others, almoſt four moneths, and Outlawries in regard of the ſeverity thereof, and ought not, as our *Bracton* ſaith, to be upon ſhort prefixions. *Bracton lib. 3. de Corona, cap. 11.*

And if no Coercion ſhall be uſed by Proceſs of Arreſt and Utlary, will render our Juſtices in our Courts of Juſtice to be like ſo many good old *Elies*, whoſe remiſsneſs in not uſing Coercion when it was in his power, was the cauſe of Gods ſeverely puniſhing him, by the forfeiture of the Office of High Prieſt, which he had for ever ſetled upon him and his poſterity.

Our Laws made by King *Canutus* before the Conqueſt, enjoyned a mercy, moderation and clemency, which our excellent *Magna Charta* did imitate, when they would not have any one diſſeiſed or impriſoned without triall by his Peers, or making a juſt defence,

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of which such a peremptory and short prefixion of time fit only for a *Pye-powder* Court, will debar him, and the punishment should be proportionable to the offence, of an implied contempt by his not appearing, if he had received the Summons which that great Charter commands to be with a *salvo contenemento*, of the Gentleman, or Freeholder, *waynagio*, of the Farmer or Husbandman, and *Merchandiza*, of the Citizen or Tradesman.

Few of the Writs in our Law being peremptory, as the Writs of *Right* and grand Affise are, some other Writs as in waste not peremptory, or making a Judgement by default, untill the grand distress, and many others by our Statute-Laws according to the pattern of Gods own Laws, in his righteous government of his chosen people of *Israel*, have three several Writs of the same sort awarded before a default or punishment: Writs of *Dower* have five Returns in all its Process, and where a *grand Cape* is granted for not appearance, the Land is repleviable.

Such a surprize of people by entring of Judgements by default, and taking out Executions, will render the Suits more expencefull bitter and pertinacious, and make such a Law to be like *Dracos* amongst the *Athenians*, of *punishing the robbing of an Orchard with death*, that of the *Romans*, learnt from the *Athenian* and *Grecian* Laws and Tables, to *cut an insolvent Debtor into pieces, and give every Creditor a piece*, and that ancient Custome in our City of *London*, that if *any Freeman sufficient and able, shall be summoned by a Serjeant, to appear and answer a Plaint at* Guildhall, *and make a default, he shall be amerced, the grand distress presently awarded, and his doors fastened and sealed, untill he shall come to answer, and if he break the sequestration, shall be arrested by his bo-*

*dy,*

*ly*, have made all thoſe three Laws unpracticable, and *felones de ſe*, and thrown them into a non-uſage and deſuetude.

And when every man may rationally believe that many an Action may as well as many a Plaintiff be unjuſt, malicious, or vexatious, this new and expedite invention of a ſpeedy getting in of Debts, will equipp and furniſh out many a malicious deſign, by a publick Proclamation or Bill upon a mans door of 10000 or 1000 owing, to croſs or hinder a marriage of himſelf, his widdow, or children, a partnerſhip, gainfull truſt, or his or their ſecurity, to be taken upon ſome profitable bargain or purchaſe, and no ſmall poſſibility of concealing the contrivers, or not being able to diſcover them.

The old, ancient, and conſcionable Law of Eſſoyns, *de malo lecto*, or *ſervitio Regis*, ſeldom denied to any Engliſh men, but in ſome certain Caſes when it is forbidden by Statutes or Acts of Parliament, muſt now be of no uſe, men that are abſent from their houſes at Sea, or beyond the Seas, may without any defence be undone, diſcredited and ruined, and their Papers, Books of Accompts, and Evidences, upon ſome trick or deſign, more than for any juſt Debt, be ranſackt and taken away by ſuch a ſurpriſe of a Judgement and Execution.

No Inhabitant in *Wales*, where their Laws do already allow them an *iterum Summons*, nor the Cinque-Ports, or any of the Counties *Palatine* of *Cheſter*, *Lancaſter*, or *Durham*, will be able to borrow any money in *London*, or out of their own Countreys, upon the beſt Security of any of thoſe Countreys, when they cannot be outlawed.

The tedious, craggy, incertain, and dilatory wayes of recovering of Debts, or procuring remedies at Law by

*Summons*, *Pone*, and *diſtreſs*, which in former ages when Trade and Merchandize were ſmall, but now exceedingly encreaſed, the Lords of Mannors had their Bondmen and Bondwomen in their families, villains and neiſes regardant to their Mannors, did let their Farms at ſmall Rents, and the ſervices of doing a great part of their husbandry, as carrying their wood and dung, mowing, reaping, *&c.* 600 Abbies and religious houſes, and their numerous Monks, Friers and Nuns, and all or moſt of the ſecular Clergy freed from common Proceſs, and the many thouſand Tenants *in Capite*, and by Knight-ſervice frequently imployed in the wars, enjoyed the like Exemptions, was then ſo uſefull, as there was not that neceſſity of Arreſts as the latter ages have produced, will by this new way, although Judgements ſhould not be ſurprized and ſnapt, revive and introduce thoſe great and many inconveniencies, attending thoſe kind of Writs and Proceſs, which our forefathers about 300 years ago had forſaken, and their poſterity muſt be driven out of the better way into the worſe, which they that have of late ſued the *Grocers* and other Companies, & the Mayor & Commonalty of *London*, for great ſummes of money, and are not able to find their lands, although they have great revenues belonging unto them, will readily acknowledge.

The Common Law never intended that any but the Sheriffs, the ſworn Officers of the King, in the execution of Juſtice, and his Writs and Proceſs in order thereunto, and their Bailiffs and under-Officers, for whom they are to be reſponſal, ſhould execute the Kings Writs or Proceſs, nor would truſt the Plaintiffs, as is endeavoured by this intended Act, to execute the Writs of Summons, which by the careleſsneſs, partiality, extortion, and corruption of the Sheriffs and their Bailiffs, will ſoon be brought to paſs.

The

The ſerving of *Summons* in every Shire of *England*, either perſonally, or by affixing the Copies at the fore-doors, where there may be many thouſands in a year, eſpecially in ſuch large and great Counties as *Yorkeſhire*, *Lincolnſhire*, *Eſſex* and *Kent*, where Cities, Towns, Villages & Houſes, are remote and far diſtant, will make the charge to be as great as the labour and travel, and a great deal more, if the Creditor ſhall undertake it himſelf, and raiſe and encreaſe the Fees, by a neceſſity of the Creditors taking from the Sheriff the Copy of the original *Summons*, to affix at the door, or leave with the ſervants of the houſe, the Writ it ſelf being cloſe ſealed, and directed to the Sheriff.

The executing of the Summons before the return of it, will ſo greatly delay the Creditors, in the recovery of their Debts, as when by a Writ of *Capias* they can ſuddenly or within an hour or a day or a ſhort time, cauſe a fleeting or ſuſpected Debtor to be arreſted when they find him in *London*, the magazine of all Trade or Commerce, and confluence of moſt of the people of the Nation, whereby to get their money or good bail to the Action, they muſt at the ſooneſt tarry 15 dayes before they can ſummon him either in perſon or at his houſe, if he have any, or his lodging, if they can tell how, and perhaps in a long time know not how to find it, or betwixt ſo many weeks or moneths as ſhall happen to be betwixt the time of ſuing out the original Writ of Summons, and the Return, they being in a Summer or Lent-vacation not without a great charge and trouble every day, week, or moneth, to be made or ſealed, and if taken out or procured a week after the end of *Michaelmas* Term, are to tarry unſecured of their Debt till the return of the Summons, which will not be in leſs time than ſix weeks, if within a week after *Hillary* or

*Candlemas* Term ſeven or eight weeks, and if within a week after the end of a *Trinity* Term four moneths, and ſo proportionably, according to the times or occaſions of taking out the original Writs of Summons.

The Defendants in the mean time having a large opportunity allowed them to abſent themſelves, or make away any Eſtate that is perſonal, or if the Creditor ſhall keep the Summons by him untill a week or fortnight of the Return, he will thereby abridge or hinder himſelf of ſo much, or many opportunities of arreſting the Defendant.

And if he ſhould obtain a Judgement by default, and Execution thereupon, notwithſtanding all the ſwearing and forſwearing happening in ſuch a Caſe, is to bear the charges of the Sheriffs Fees of 12 d. in the pound for the firſt hundred, ( according to the penalty, if it be upon a Bond or pœnal Bill ) and 6 d. for every other hundred pounds, and if the Judgment be not well grounded, finds himſelf upon the vacating or annulling thereof, to have loſt ſo much of his time, money and expectation, and to be in a worſe condition than he was before, or if he had proceeded by the way of Arreſt.

Originals in Actions of Treſpaſs and upon the Caſe, which do far exceed the Actions of Debt in number, ſhould be executed by none but the Sheriff or his Bailiffs, becauſe he is to take Pledges or Security that the Defendant ſhall appear to the Action.

And in Caſe of Summons in Actions of Debt, the Sheriff cannot return that the Defendant was ſummoned, unleſs he or his Bayliffs do make the Summons, and cannot otherwiſe ſatisfie himſelf or his Oath by any *Affidavit* of the Creditor or his ſervant that it was done, and if he ſhould return it to be done when it was not done, may have an *Action of the Caſe* brought againſt him by the

the Defendant, for any damage happening unto him; which in the Caſe of bringing all his Creditors upon him, which otherwiſe would not, or of a Citizen made *Bankrupt*, thereby may amount to no ſmall matter.

And if the Sheriff do but cautiouſly as he ought, where no viſible Eſtate of the Defendants appears unto him, return a *nihil habet*, that he hath nothing by which he may be ſummoned, there muſt then of neceſſity after that loſs of time, trouble and expence, be made a *Capias* to arreſt the body, as it muſt in all other Caſes, where the Sheriff cannot receive a certain proof or information, that the Defendant hath any Eſtate whereby he may be ſummoned, or is to be found.

The Writ of *Summons*, and ſuch a Judgement by default thereupon, will ſo perplex and endanger the Office of Sheriffs, by the reaſon of ſuch a *peremptory Summons*, and the Actions which may be brought againſt them, by the falſhood or deceits of their many Bayliffs in the ſummoning of many hundred perſons, as will make every man afraid of the Office.

And to deliver a Declaration at the ſame time when the Defendant is to be ſummoned, is an over-haſty and prepoſterous proceeding, doing that before or at the ſame time which ſhould be done after the Defendants appearance, and at ſome reaſonable time afterwards, on purpoſe to bereave the Defendant of that time which the Law allows him, and will be a courſe not to be paralleld by any Law of the world.

Such a quick work, and a few dayes after to be given to a Defendant before Judgement gained, will be as bad as the condemning of a Defendant before he can be heard, when he dwelleth in *Northumberland*, *Cornwall* or *Wales*, or other remote places, and is to ſeek both for his Witneſſes and Evidences, & it cannot be denied but that there

there are and are likely to be alwayes many more Defendants than Plaintiffs, and they that are Plaintiffs at one time may be Defendants at another.

The Charges of the Plaintiffs will be not leſſened but encreaſed, in the expence of two Bayliffs to make the Summons, and the drawing of the Declaration beforehand, which otherwiſe he would not ſo ſoon have been put unto, and the charges and trouble of the Defendant very great, when to free himſelf from a Judgement indirectly gained, he ſhall be put to the charge of Witneſſes, *Affidavits*, motions in Court, reference to a Prothonotary, his Certificate and Report, and another motion thereupon, and Orders, and if help cannot be gotten that way, great charges and trouble of bringing a Writ of Error to reverſe the Judgement, Bail given, and Superſedeas obtained.

By the tricks of Bayliffs, under-Sheriffs and their Bayliffs, and of Bayliffs of Liberties, the Writs of Summons may be ill or unduely executed, on purpoſe to faſten ſuch Judgements upon Defendants, whereby to make them to pay 12 d. *per* pound upon the firſt hundred pounds, and 6 d. in the pound for the reſt of the money, to be levied upon Executions.

By the delayes and expence of time in the executing of the Writ of Summons, the Plaintiff if he ſhould afterwards be enforced to ſue the Defendant to an Utlary, will loſe a great deal of time which he might otherwiſe have ſaved.

There be Statutes and Acts of Parliament enough to repreſs the abuſes of under-Sheriffs and their Bayliffs, if put in execution, without the creating of a diſeaſe inſtead of a remedy, and whatſoever the abuſes are which are by them and their Bayliffs by extortions, the ſmall number of continued or renewed Writs for want of execution

cution or appearance, being ſcarcely above one in every hundred, will prove there are none or very few delayes in the execution of Writs.

Thoſe Merchants and Traders of *London*, *Briſtoll*, *Hull*, and other merchandizing Towns, who are ſo afraid of having their credit broken, by a proteſt made in the private Shop or Houſe of a Notary, and ſent from *London* beyond Sea, or to ſome Town of Trade in *England*, that they have not upon no long day aſſigned, anſwered or paid a Bill of Exchange charged upon them, which could but intimate or give a ſuſpicion of want of money or credit, and thoſe that have had all their Debts by ſuch a ruining *Hericano* ruſhing in upon them, and thereby ſuddenly made Bankrupts, can eaſily believe what a ready way it will be malicioufly or over-haſtily to break and ruine any Merchants or Tradeſmans credit, by affixing ſuch a Copy of a Summons upon their Ware-houſe, Shop or Street-doors, like a *Red Croſs*, and *Lord have mercy upon us*, in caſe of a houſe infected with the plague, declaring the owner to be as one which is to be ſhun'd, and not to be truſted or dealt with, and how wide the difference will be betwixt a *proteſt* made in a Notaries Shop, and taken notice of but by a few, and a *Summons* nailed or faſtened upon a door in a Street, where multitudes may gaze at it, and carry home and diſperſe the diſcourſe and ſcandal thereof.

The Citizens of *London*, where are weekly as many Actions entred in the Compters or Sheriffs Offices of *London*, as do amount unto 100 or 200 Actions of Debt for Citizens one againſt another, and no publick Aerrſt made, but a private notice given to come & put in bail, to appear and anſwer the Action, without endangering of their tender credits, will now be taught a way by Law how to murder one anothers Eſtates & Credit. Such

Such a Courſe of *peremptory Summons*, and Judgement ſuddenly to be had thereupon for want of an appearance, will be more ſevere than the Act of Parliament made in the 21 year of the Raign of King *James cap.* 19. againſt Bankrupts, and ſuch as fraudulently by a counterfeit breaking, do endeavour by eaſie compoſitions to deceive their Creditors, where they are not ſo declared to be untill *after ſix moneths expired, after an original Writ ſued forth to recover the ſumme of one hundred pounds*, (for a leſſer ſome doth not bring him within the fierceneſs of that Act of Parliament) and *notice thereof given or left in writing at his now dwelling houſe or laſt abode*, (not affixed at his Street-door) *or ſhall continue in priſon above two moneths for ſuch a Debt.*

21 *Jac. cap.* 19

When by the Cuſtome of the City of *London*, any man arreſted whether he be Citizen or Forreigner, cannot be bailed but by two Citizens or Freemen thereof, and many a Stranger coming thither for Trade or other buſineſs, hath been ſo bailed, Citizens and Tradeſmen will now be afraid to be bail either for their neighbours, kindred, friends or ſtrangers, when by doing thoſe offices of friendſhip, they ſhall be in danger to be poſted up, and have all their own Creditors brought upon them.

Credit being a great part, and not ſeldom more than the one half of Trade and Traders will by this new way be put into ſuch a tottering and ſlippery condition, as the Trade of the Nation now in a deep conſumption or *Hectick* Feaver, will be every day more and more in danger to be deſtroyed, and Tradeſmen will be afraid to truſt, when they know not how ſoon this *ſcandalizing Devil* may knock at their door.

The Merchants of *London*, one of the greateſt *Emporiums* of Trade in the world, who do buy & trade much upon

much upon credit, not only in the parts beyond the Seas, but at great Fairs and Marts within the Kingdom, when the news or advice ſhall come, that their diſcredit hath been poſted and fixed upon their doors, will find their Trades to decay, as their Credits ſhall be ſick or languiſh.

The Citizens of *London* which do travel to *Briſtol* or *Sturbridge*-Fair, or elſewhere, muſt either have their Cauſe by halfes defended by their wives and ſervants at home, or be undone whilſt they are abroad upon their neceſſary occaſions, and by this means alſo one man may be undone for another upon a miſnomer, or miſtaking of a Defendants name or perſon, or identity, or ſameneſs of addition or dwelling, and though it may at the firſt to ſome that cannot diſcern the conſequences of it, ſeem to make the way of Suits leſs chageable, will be ſure enough to make it more troubleſome and coſtly at the laſt.

All unjuſt Actions or pretences at Law, as upon Bonds ſatisfied and not taken up, Shop-books paid and not croſſed, ſleeping Judgements, Statutes or Recognizances either performed, or not juſtly to be performed, ſhall in this *unmercifull Credit-tearing* Courſe make mens outward doors to be the proclaimers of a diſcredit and ruine, without a Cauſe put upon their owners, will raiſe ſuch a heat and animoſity, as where Coſts of Suit before would pacifie, nothing but Actions of the Caſe for the damage will recompence them.

Such a Courſe of recovery and getting in of Debts being not uſed in *Holland*, *Ligorn*, or other parts of the world, where Trade is moſt concern'd, and hath the happineſs to encreaſe and flouriſh.

The petty Tradeſmen and Shop-keepers in the Market-Towns in the Countreys, who are but Retailers

and Tributaries to the Citizens of *London*, *Briſtol* and *Hull*, will when they ſhall by malicious Neighbours or over-haſty and unkind Creditors be thus poſted and defamed, have all their Creditors at *London*, *Briſtol* and *Hull*, who have truſted them with the Commodities by which they ſubſiſt, and make their Livelyhood make all the haſt they can to ſeize, arreſt and undo them.

Such a *Syſteme* of infamy and cruelty, made to be the more mercileſs by over-ſhort prefixions, being worſe than that of the *Ruſſians* beating with Cudgels their inſolvent Debtors after they are arreſted, upon the calves of their legs and bottom of their feet, being next to the ſtigmatizing or burning letters of ſhame and abhorrence in the hand of Felons or man-ſlayers, or the Foreheads or Cheeks of extraordinary Rogues and Villains, will not be agreeable to our *Engliſh* Climate, but fit only ſome petty Landlords of little Sheds or Cottages in ſome of the out-skirts of the Suburbs of *London* or *Weſtminſter*, where when their Tenants failing to pay their two pence a night Rents at the Weeks end, have nothing to be diſtrained, they by an unhandſome Law of their own making do take the doors off the hinges, and cannot be ranked with the Proclamations at the Church-door, in the caſe of Utlaries, where there hath been a competency of time allowed by ſeveral precedent Writs, or with the peremptory Summons, and Judgements by default in ſome real Actions, as in Dower, where there are five returns, and in Formedons nine.

The prodigal, drunken, or deboiſt, will not care how faſt they ſpend all they can borrow, for though they have nothing left, they ſhall be ſure this way not to have their perſons quickly or eaſily moleſted.

The

Will put the Lords and Bayliffs of Liberties and Franchiſes, as well as the Sheriffs and their under-Sheriffs, into great ſtore of trouble and damages, for not many times performing impoſſibilities, when they ſhall have Actions of the Caſe brought againſt them for not ſummoning a Defendant, or for a *Tarde* returned, and damages endeavoured to be recovered againſt them, as in Actions of *Eſcape*, whereas the cauſe of Action for a *non-Summons*, or for a *Tarde* Summons, will where the Defendant is not altogether inſolvent or quite run away, be but trivial, and the damage little or nothing, and no ſmall fire or fewel will be added to contentious Suits, when the endamaged Defendants ſhall bring their Actions alſo againſt them for falſe return of Summons, and the ſervants of the Defendants Families ſhall out-ſwear the under-Sheriffs and their Bayliffs.

Which with many more miſchiefs and inconveniences, though not all to be fore-ſeen before they happen, will not be afterwards eaſie to be prevented, and if it could bring with it any benefit, will never be enough to out-ballance thoſe multitudes of miſchiefs and inconveniences which will inevitably attend it.

But will be as miſchievous and inconvenient to the body *politick*, in changing ſo good, ſo ancient, ſo neceſſary, & continued a Courſe of Juſtice, as it would be for the body *natural* to have all the former Courſes of experimented Phyſick and Medicine aboliſhed, & a new & unexperimented method ſet up in the room of it, procure an univerſal ruine and diſcredit to all but the richer part of the people, who are but as one in ten to a people haraſſed, impoveriſhed, and almoſt ruined with a long unhappy War, and confuſions, and their own luxuries, exceſs, and vain expences added thereunto.

FINIS.